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6 Attorney for Benjamin Kyker

7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

9 United States of America,  
10 Respondent/Plaintiff,  
11 v.  
12 Benjamin Kyker,  
13 Petitioner/Defendant.  
14

Case No. 2:13-cr-00212-KJD-PAL-1  
(Related Case No. 2:16-cv-01395-  
KJD)

**Petitioner's unopposed motion to  
set briefing schedule to address  
*United States v. Davis*, 139 S. Ct.  
2319 (2019)**

15 **Certification:** This motion is timely filed, as no time limitation applies.

16 Petitioner/Defendant Benjamin Kyker moves this Court to authorize the  
17 parties to file supplemental briefing addressing the impact of *United States v.*  
18 *Davis*, 139 S. Ct. 2319 (2019) on Mr. Kyker's motion to vacate under 28 U.S.C.  
19 § 2255. ECF Nos. 58, 59. A § 2255 motion to vacate may be supplemented in the  
20 same manner as any other civil action, and that process is governed by Federal  
21 Rule of Civil Procedure 15. *See* Rules Governing § 2255 Proceedings, Rule 12.  
22 Under Fed. R. Civ. P. 15(d), "[o]n motion and reasonable notice, the court may, on  
23 just terms, permit a party to serve a supplemental pleading setting out any  
24 transaction, occurrence, or event that happened after the date of the pleading to  
25 be supplemented."  
26

1 In light of this liberal standard, Mr. Kyker respectfully requests that this  
2 Court grant his motion for briefing to supplement his § 2255 motion and address  
3 updated developments in the law based on the Supreme Court's decision in  
4 *United States v. Davis*, 139 S. Ct. 2319 (2019), issued on June 24, 2019. The  
5 *Davis* decision directly applies to Mr. Kyker's § 2255 challenge that his conviction  
6 and sentence are invalid because the residual clause of 18 U.S.C. § 924(c)(3) is  
7 unconstitutionally vague.

8 Mr. Kyker proposes the following briefing schedule: Mr. Kyker's  
9 Supplemental Brief shall be filed by September 27, 2019; the government's  
10 Supplemental Brief shall be filed by October 11, 2019; and Mr. Kyker may file an  
11 optional reply within 7 days of the government filing its Supplemental Brief.

12 Counsel for the government, Appellate Chief Elizabeth Olson White, has  
13 been contacted regarding this motion and does not oppose the supplemental  
14 briefing proposed herein.

15 Dated: September 18, 2019.

16 Respectfully submitted,

17 RENE L. VALLADARES  
18 Federal Public Defender

19 By: /s/ Amy B. Cleary

20 Amy B. Cleary  
21 Assistant Federal Public Defender

22 IT IS SO ORDERED:

23   
24 \_\_\_\_\_  
25 UNITED STATES DISTRICT JUDGE  
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Dated: 9/30/2019

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